

REPORT TO: Cabinet

MEETING DATE: 13 September 2022

BY: Executive Director for Council Resources

SUBJECT: Annual Pensions Report 2021/22 – Amendments to Pension Discretions Policy

1 PURPOSE

- 1.1 To summarise the early retirement activity within the financial year 2021/22, in accordance with External Audit requirements and Council Policy.
- 1.2 To seek approval for an amendment to the Council's Pension Discretion Policy in relation to Shared Cost AVCs

2 RECOMMENDATIONS

- 2.1 That Cabinet note the content of the report with regard to the pension activity in respect of early retirements in the financial year 2021/22.
- 2.2 The Cabinet approve the amendment to the Council's Pension Discretion Policy to allow for Shared Cost AVCs.

3 BACKGROUND

3.1 Council's Retirement Activity in Financial Year 2021/22

There are currently three types of pensionable early retirements available to the Council, for all employees other than teaching employees (see paragraph 3.2). These are:

- **Due to Efficiency or Redundancy, at the discretion of the Council.**

This allows the individual, aged over 55 years (50 if in the Scheme before 5 April 2006), at the discretion of the Council, to retire early, drawing their pension without any actuarial reduction being applied. In this case the strain costs relating to the early release of the pension are borne by the Council.

- **Ill-Health retirement**

This occurs where an employee is confirmed by Occupational Health as being permanently incapable of efficiently discharging their duties because of ill-health or infirmity of mind or body. The employee is permitted early access to an enhanced pension in accordance with the

superannuation regulations and requires no exercise of Council discretion. The costs are fully borne by the pension fund.

- **Flexible Retirement**

This is a discretionary element of the pension regulations which allows employees who meet certain criteria to draw their pension and continue working on the basis of reduced hours. To qualify, the employee must be over 55 years old, have a minimum of 2 years pensionable service and must reduce their working hours by a minimum of 40%. Generally there are no costs to the Council as the employee would have their pension actuarially reduced. However, in some circumstances, if the employee meets the Rule of 85, there can be costs. In these cases, the Council's agreement must be obtained for the early release of the individual's pension. If agreed, the employee then continues working on reduced hours and will automatically be re-enrolled into the pension fund while drawing the pension benefits they have already accrued (if they did not wish to join the scheme then they would need to opt out).

3.2 A summary of the pension activity in the financial year 2021/22 is as follows:

Department	Health & Social Care	Education & Children's Services	Place	Council Resources	Totals
Compulsory Severance (pensionable)	-	-	1	1	2
Voluntary Severance (pensionable)	-	-	-	-	-
Medical Retirement (Lothian Pension Fund)	1	1	7	-	9
Medical Retirement (Teachers Scheme)		1			1
Flexible Retirements	4	4	3	2	13

- 3.3 Details of the Council's financial commitments relating to pensions are included in the unaudited 2021/22 Financial Statements. As a result of ongoing pension costs arising from decisions taken in earlier years, in addition to the up-front strain costs now due in the year they accrue, during 2021/22 the Council spent £0.712 million (£0.733 million in 2020/21) on early retirements for Local Government Workers and £0.465 million (£0.488 million in 2020/21) for teachers.
- 3.4 The Council has a liability to pay pension costs in the future. At 31 March 2022 this liability has reduced and was actuarially assessed at £98.794 million (and at 31 March 2021 at £196.054 million). This liability is reviewed through an actuarial valuation which takes place every three years. The most recent valuation date was 31 March 2020. The contribution stability mechanism remains in place with the Lothian Pension Fund based on the current valuation results, which takes into consideration the Lothian Pension Fund performance and assessed liabilities. Contribution rates from 1 April 2021 are frozen for 3 years and then increase or decrease by a maximum of 0.5% per annum.
- 3.5 In addition to the above figures, the Council also makes 'ex gratia' pension payments to 84 former employees who worked less than 16 hours per week, were aged under 50 at 31 December 1993 and were unable to join the LGSS pension scheme under the statutory rules at the time. The value of these payments during 2021/2022 was £50,793 (and in 2020/21 it was £55,136). The Council took the decision to remove this discretion at Cabinet on 9 June 2009. No new ex gratia pension payments will arise and the existing estimated value of future liabilities based on the actuarial mortality estimate is £0.260m and will therefore reduce over time.

PENSION DISCRETIONS POLICY

- 3.2 The Council is required under Regulation 58 of the Local Government Pensions Scheme (Scotland) Regulations 2014 to formulate, publish and keep under review its policy in relation to certain discretions contained within the regulations.
- 3.3 In exercising its discretionary powers the Council is mindful of the need to maintain public confidence therefore the areas where discretion is to be applied has been limited with a view to minimising the potential impact upon the public purse.
- 3.4 The Council will shortly be introducing a Shared Cost AVC for employees of the Council who are members of the Lothian Pension Fund. The introduction of this scheme allows employees to make tax and national insurance savings on their contributions while saving for retirement. In addition the Council makes savings through reduced national insurance contributions on the amount of salary sacrificed.
- 3.5 The introduction of this scheme requires an amendment to the policy and a copy of the updated policy statement with the amendment to 3.8.2 is attached.

- 3.6 Any application to the Council to exercise discretionary powers will be considered in line with the approved policy, taking account of the financial impact on both the Council and the pension scheme.

4 POLICY IMPLICATIONS

- 4.1 The Council is required to report its pension activity annually to elected members in accordance with the Audit Scotland requirements.

5 INTEGRATED IMPACT ASSESSMENT

- 5.1 The subject of this report does not affect the wellbeing of the community or have a significant impact on equality, the environment or economy.

6 RESOURCE IMPLICATIONS

6.1 Financial

- 6.1.1 Early retirement decisions taken in earlier years have created a significant liability for current and future Council Tax payers. There are no immediate budgetary implications associated with this report.

6.2 Human Resources

- 6.2.1 Finance and Human Resources continue to ensure that any retirements are in accordance with Council Policy and within the Standing Orders and the supporting Scheme of Delegation and also that managers are aware that any pensionable retirement must meet the strict efficiency or redundancy requirements and will generate the necessary savings.

6.3 Other - none

7 BACKGROUND PAPERS

- 7.1 Policy on Enhanced Compensation for early Retirement on Grounds of Redundancy and Efficiency– December 2010
- 7.2 Lothian Pension Fund Website: www/lpf.org.uk
- 7.3 Local Government Pensions Scheme (Scotland) Regulations 2014
- 7.4 Policy Statement on Application of Regulatory Discretions approved at Cabinet on 19 January 2021.
- 7.5 Flexible Retirement Policy – December 2013

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This policy applies to all employees except Teachers

Section

- 1 Introduction
- 2 Key Principles
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Policy Statement on Application of Regulatory
Pensions Discretions Local Government Pension
Scheme (Scotland) Regulations 2018

This policy details the discretions the Council apply with regard to the pension's regulation and replaces the previous Policy agreed at Cabinet on in January 2021.

**August
2022**

1 Introduction

- 1.1 Regulation 58 of the Local Government Pension Scheme (Scotland) Regulations 2018 states that each employer participating in the Scheme is required to formulate a policy, concerning the exercise of certain discretions contained within the regulations.
- 1.2 East Lothian Council after careful consideration and having regard to the extent to which the exercise of the functions could lead to a serious loss of confidence in the public service, has decided to exercise the discretions as set out in this policy statement.
- 1.3 The policy is applicable to all East Lothian Council employees who are eligible members of the Local Government Pension Scheme. The Policy excludes teachers who are covered by the Scottish Public Pensions Agency (Teachers Superannuation Scheme).
- 1.4 This Policy replaces the previous Policy Statement on Application of Regulatory Pensions Discretions agreed at Cabinet on 13 September 2016.

2 Key Principles

- 2.1 East Lothian Council does not have a general early release policy, but will consider individual applications on their merits and in relation to the efficient operation of the services of the Council.
- 2.2 This Policy describes the range of discretions available to the Council. All decisions in relation to the use of these discretions will take account of the short, medium and long-term financial implications to the Council.
- 2.3 In applying its discretions, the Council will always seek to ensure consistent and equitable application.
- 2.4 The Council will ensure this Policy is reviewed and updated to comply with any future amendments to the statutory redundancy provisions and Pension Regulations.

3 Discretions

3.1 Regulation 16 (2)(e) & 16(4)(d) of the Local Government Pension Scheme (Scotland) Regulations 2018: (Additional Pension Contributions)

- 3.1.1 This regulation allows the Council to voluntarily enter into an Additional Pension Contributions (APC) contract with a scheme member who is contributing to the main section of the scheme in order to purchase additional pension to a level not exceeding the additional pension limit.

The Council may choose to fund in whole, or in part, any arrangement entered into by an active scheme member to pay additional pension contributions by way of regular contributions in accordance with Regulation 16(2)(e), or by way of a lump sum in accordance with regulation 16(4)(d).

3.1.2 The Council will not exercise this discretion.

3.3 Regulation 29(7) - of the Local Government Pension Scheme (Scotland) Regulations 2018 – (Flexible Retirement)

3.3.1 This regulation, subject to certain conditions allows members to draw some or all of their scheme benefits while still in employment.

3.3.2 The Council will not have a general policy of agreeing to requests for flexible retirement (i.e. early payment of retirement benefits to a member who has attained age 55 and who, with the Council's consent, reduces his/her hours and/or grade). However, such requests will be considered where it can be demonstrated to be to the Council's advantage or in its operational interests.

3.3.3 Should the Council agree to early payment of benefits under this regulation, it will not exercise the discretion of waiving any reduction, which would normally be applied to the benefits.

3.3.4 Further detail of the Council's application can be found in the Application of the Council's Policy on Flexible Retirement available on Elnet.

3.4 Regulation 29(9) of the Local Government Pension Scheme (Scotland) Regulations 2018: (Waiving Actuarial Reduction on Early retirement between 55 and 60)

3.4.2 Any active scheme member who has not attained normal pension age, but has attained age 55 may elect to receive immediate payment of their benefits, providing they have left employment, but these benefits may be reduced for early payment.

3.4.3 The Council will not have a general policy of agreeing to waive any reduction which would normally be applied to the members benefits.

3.5 Schedule 2 – paragraphs 2&3 of The Local Government Pension Scheme (Transitional Provisions and Savings) (Scotland) Regulations 2014

3.5.2 This section deals with the transitional provisions of the Rule of 85 and the discretionary element for the Council to turn on the Rule of 85 protections.

3.5.3 The Council will not have a general policy of agreeing requests to apply the rule of 85 from a member who has attained age 55 and has elected for early payment. However, where the Council considers it can be demonstrated as being to their advantage or in their operational interests, it will consider such requests.

3.5.4 The Council will not have a general policy of applying Rule of 85.

3.6 Regulation 30 of The Local Government Pension Scheme(Scotland) Regulations 2018 – Award of Additional Pension

3.6.1 The Council may award a member additional pension which would become payable from the same date as the member's normal pension. The maximum extra pension which can be awarded is £5,000. Such awards can be made to

active members, or within 6 months of leaving to members whose employment was terminated on the grounds of redundancy or the interest of efficiency. The Council would be required to make an appropriate payment into the fund within one month of making a resolution.

3.6.2 The Council will not exercise this discretion.

3.7 Regulation 30 of the Local Government Pension Scheme (Benefits, Membership and Contributions) (Scotland) Regulations 2008 – (Voluntary Early Retirement between the ages of 50 and 60)

3.7.2 Any former scheme member who left prior to 1 April 2015 and is aged 55 or over, providing they are no longer in local government employment, may request unreduced payment of their deferred benefits on compassionate grounds.

3.7.3 The Council will only exercise its discretion to waive the actuarial reduction in exceptional cases of hardship.

3.8 Regulation 17(1) of the Local Government Pension Scheme (Scotland) Regulations 2018: Shared Cost AVC's

3.8.1 This regulation allows the Council to set up an additional voluntary contributions (AVC) scheme requiring a contribution from the Council. Scheme members already have access to AVC arrangements which accept member-only contributions.

3.8.2 The Council will exercise the discretion to establish a shared cost AVC scheme.

3.9 Regulation 86 of the Local Government Pension Scheme (Scotland) Regulations 2014: Forfeiture of pension rights after conviction for employment-related offences

3.9.1 Under this regulation, the Council may apply to the Scottish Ministers to forfeit all or part of a scheme member's pension benefits. This would apply in a case of conviction for a serious offence which were either 'gravely injurious to the State or 'liable to lead to a serious loss of confidence in the public service'.

3.9.2 In the interests of maintaining confidence in the public service, the Council reserves the right to exercise this discretion should the need arise.

3.10 Regulation 87 of the Local Government Pension Scheme ((Scotland) Regulations 2018: Recovery or retention where former member has misconduct obligation

3.10.1 Under this regulation, the Council may recover from his pension benefits any loss arising from a criminal, negligent or fraudulent act by a former employee. Providing that all other efforts to recover monetary obligations have been exhausted.

3.10.2 In the interest of maintaining confidence in the public service, the Council reserves the right to exercise this discretion should the need arise.

3.11 Regulation 95 of the Local Government Pension Scheme (Scotland) Regulations 2018: Inward Transfer of Pension Rights

3.11.1 The Scheme Regulations allow members to transfer previous pension rights into the Local Government Pension Scheme. The Regulations state that transfers must be requested within 12 months of the member joining the Scheme. However the Council and administering authority have discretion to allow transfer to proceed after this time limit has expired.

3.11.2 The Council will not have a general policy of allowing a late transfer to proceed. Instead it will consider individual requests on their merits and may, in agreement with Lothian pension Fund exercise the discretion to allow a late transfer to proceed where there is no financial impact on the Council and Lothian Pension Fund.

3.12 Regulation 9(4) of the Local Government Pension Scheme (Scotland) Regulations 2018: Member Contributions

3.12.1 Under this regulation, the Council may adjust a member's pension contribution rate should a change in pay move them into a different band during the financial year.

3.12.2 The Council reserves the right to exercise this discretion should the need arise.

3.13 Regulation 16(16) of the Local Government Pension Scheme (Scotland) Regulations 2018: Additional Pension Contributions

3.13.1 Under this regulation, where a member enters into an additional pension contract to which employer contributions may be made (Shared Cost Additional Pension Contract), an application to enter into the contract must be made within 30 days of returning to work.

3.13.2 The Council will not exercise this discretion

3.14 The Local Government (Discretionary Payments and Injury Benefits) (Scotland) Regulations 1998 and the Local Government (Discretionary Payments and Injury Benefits) (Scotland) Amendment Regulations 2008

3.14.1 The Councils policy in terms of the discretion it applies in relation to the above regulations is detailed in its Policy on Enhanced Compensation for Early retirement on the Grounds of Redundancy and Efficiency approved at Cabinet on 7 December 2010.

4 Policy Review

4.3.2 In developing this policy, East Lothian Council has referred to both the relevant statutory provisions and also advice from the City of Edinburgh Council as the Pension Scheme Administering Authority.

4.3.3 This policy will be kept under review and will be revised as and when necessary to reflect any changes in relevant regulations or policy. Any changes to this policy will be advised to both the administering pension authority and scheme members.

S Fortune
Executive Director Corporate Resources

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